

1
2
3
4
5
6
7
8
9
10 **UNITED STATES DISTRICT COURT**
11 **NORTHERN DISTRICT OF CALIFORNIA**
12 **OAKLAND DIVISION**

13 MARLON H. CRYER, individually and on
14 behalf of a class of all others similarly situated,
15 and on behalf of the Franklin Templeton 401(k)
Retirement Plan,

16 Plaintiffs,

17
18 v.

19 FRANKLIN RESOURCES, INC., the Franklin
20 Templeton 401(k) Retirement Plan Investment
Committee, and DOES 1-25,

21 Defendants.
22
23

Lead Case No. 4:16-cv-04265-CW
[Consolidated with Case No. 4:17-cv-
06409-CW]

**DECLARATION OF ROBERT A.
IZARD IN SUPPORT OF
PLAINTIFFS' MOTION FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT AND MOTION FOR
AWARD OF ATTORNEYS' FEES
AND EXPENSES**

Judge: Hon. Claudia Wilken

24 Robert A. Izard respectfully submits this Declaration in Support of Plaintiffs' Motion for
25 Final Approval of Class Action Settlement and Motion for Award of Attorneys' Fees and Expenses,
26 and declares under penalty of perjury under the laws of the United States of America:

27 1. I am a partner at Izard, Kindall & Raabe, LLP ("IKR"), and a member in good
28 standing of the bar of the State of Connecticut. IKR is co-lead counsel for the certified class in this

1 action.

2 2. I have been actively involved in the prosecution of this Action, am familiar with its
3 proceedings, and have personal knowledge of the matters set forth herein based on my active
4 supervision and participation in all material aspects of the Action and if called to do so, I could and
5 would testify competently thereto.

6 3. IKR has extensive experience in complex class action litigation and particular
7 experience in class action litigation under the Employee Retirement Income Security Act of 1974
8 (“ERISA”). IKR has served as lead or co-lead counsel in numerous ERISA class actions in courts
9 throughout the country. A copy of the firm’s resume was filed in connection with Plaintiff’s Motion
10 for Class Certification. ECF No. 53-7.

11 4. IKR participated in all aspects of this litigation, from inception through settlement.
12 As a result of detailed factual investigation that preceded the filing of the complaint, the information
13 obtained in discovery, the lengthy motions practice in this case, and the firm’s extensive experience
14 in ERISA class action litigation, we support the proposed settlement and believe it to be fair,
15 reasonable, adequate and in the best interests of the certified Class.

16 5. Class Counsel selected the Angeion Group as the Settlement Administrator after
17 reviewing four competitive bids. In the past two years, IKR has not retained the Angeion Group
18 as an administrator for any class action settlement.

19 6. In preparation for filing this motion, I reviewed IKR’s time and out-of-pocket
20 expenses in connection with the current litigation.

21 7. The information in this declaration regarding my firm’s time and expenses is taken
22 from contemporaneous time and expense printouts prepared and maintained by my firm in the
23 ordinary course of business. The time reflected in my firm’s lodestar calculation and the expenses
24 for which payment is sought are reasonable in amount and were necessary for the effective and
25 efficient prosecution and resolution of the litigation. IKR prosecuted this case on a wholly
26 contingent basis, and has received no compensation to date for either its litigation expenses or its
27 time.
28

8. IKR devoted a total of 1490.25 hours to the prosecution of this litigation from inception through July 15, 2019, excluding time spent on the fee petition and supporting materials. The total lodestar amount for attorney time based on the firm's current rates is \$876,581.25. A breakdown of IKR's lodestar as of July 15, 2019 is as follows:

Name	Years of Practice	Rate	Hours	Lodestar
Robert A. IZard	36	\$925.00	428.25	\$396,131.25
Mark P. Kindall	31	\$850.00	105	\$89,250.00
Douglas P. Needham	12	\$550.00	384	\$211,200.00
Jennifer Somers	15	\$300.00	411	\$123,300.00
Oren Faircloth	3	\$350.00	162	\$56,700.00
Total			1490.25	\$876,581.25

9. Attached hereto as Exhibit A is a chart that breaks down the total hours spent by each attorney by the areas and tasks where their time was spent in the case.

10. Biographical details for the IKR attorneys who worked on the case are included at the end of the Firm's resume, which was filed in connection with Plaintiff's Motion for Class Certification. ECF No. 53-7.

11. The hourly rates shown in paragraph 8 and Exhibit A are IKR's normal rates for both hourly customers and class action work. IKR's class action work, which represents the large majority of its business, is a specialized national practice; we do not charge differential rates based on the location where a lawsuit is filed. Courts have approved IKR's fees in class actions litigated all over the country.

12. In the course of our nationwide practice, attorneys at IKR have worked with many of the firms that typically represent plaintiffs in ERISA class actions nationwide, just as, in this case, we are working collaboratively with attorneys from Bailey & Glasser. As a result, we are familiar with the rates charged by other firms in our industry. While there are invariably differences in rates between different firms – and even between rates for lawyers within the same firm with the same number of years of practice – in our experience each firm's rates are broadly in line with rates of other firms with nationwide ERISA class action practices, and have been the basis for awards of fees in courts around the country.

13. By way of comparison, Defendants in this action are represented by O'Melveny & Myers LLP, "an international, 800-lawyer firm with 15 offices in the world's financial and political centers." (<https://www.omm.com/our-firm/history>). While Plaintiffs do not have access to a comprehensive list of rates charged by attorneys from O'Melveny & Myers, a recent filing in *Open Source Sec., Inc. v. Perens*, No. 17-CV-04002-LB, 2018 WL 2762637 (N.D. Cal. June 9, 2018), shows partners with 13 and 24 years of experience billing at \$880 and \$995 per hour, respectively, and junior associates with three years of practice billing at \$535 per hour. The Court found these rates to be "at or below the median range for lawyers of comparable experience doing comparable work in the Bay Area." *Id.* at *3. IKR's rates are somewhat lower than the rates approved by the *Open Source* court.

14. To date, IKR's out-of-pocket expenses for this litigation are \$101,288.17, broken down as follows:

EXPENSE DESCRIPTION	AMOUNT
Court costs (<i>pro hac vice</i> fees)	\$620.00
Meals, Hotels & Transportation	\$21,158.16
Litigation Fund - Experts	\$87,263.58
Transcripts	\$4,127.05
Postage & delivery	\$330.97
PACER	\$84.90
TOTAL EXPENSES:	\$113,584.66

15. The expenses shown in paragraph 13 are all of a type that would normally be charged to a fee-paying client in the private legal marketplace. I have included \$2,500 in the estimated travel expenses related to the Fairness Hearing.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 30th day of July, 2019, in West Hartford, Connecticut.

/s/ Robert A. Izard
Robert A. Izard

Declaration of Robert A. Izard

Exhibit A

Izard, Kindall & Raabe, LLP Hours/Lodestar Breakdown by Topic
Data as of 7/15/2019

Attorney	Robert Izard		Mark Kindall		Douglas Needham		Oren Faircloth		Jennifer Somers		Totals	
Title	Partner		Partner		Associate		Associate		Attorney			
Years of Practice	36		31		12		3		15			
Hourly Rate	\$925.00		\$850.00		\$550.00		\$350.00		\$300.00			
	Hours	Lodestar	Hours	Lodestar	Hours	Lodestar	Hours	Lodestar	Hours	Lodestar	Hours	Lodestar
Factual Inv.	0	0	1.75	1,487.50	32.25	17,737.50	0	0	402.75	120,825	436.75	140,050.00
Client Contact	0	0	0	0	0	0	0	0	0	0	0	0
Pleadings/MTD	13.25	12,256.25	2.75	2,337.50	32.25	17,737.50	0	0	0	0	48.25	32,331.25
Depos/discovery	8.75	8,093.75	0.25	212.50	134.25	73,837.50	0	0	8.25	2,475	151.50	84,618.75
Class Cert	15.50	14,337.50	24.00	20,400.00	14.5	7,975.00	0	0	0	0	54.00	42,712.50
MSJ	4.75	4,393.75	0	0	49	26,950.00	0	0	0	0	54.75	31,343.75
Other Motions	19.25	16,187.50	2.75	2,337.50	9.75	5,362.50	0	0	0	0	30.00	23,887.50
Experts	91.50	84,637.50	35.25	29,962.50	39.5	21,725.00	0	0	0	0	166.25	136,325.00
Trial Prep	105.75	97,818.75	0	0	64.75	35,612.50	162	56,700	0	0	332.50	190,131.25
Settlement	169.50	156,556.25	38.25	32,512.50	7.75	4,262.50	0	0	0	0	215.50	193,331.25
Totals	428.25	396,131.25	105	89,250	384	211,200	162	56,700	411	123,300	1490.25	876,581.25